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IN THE

Supreme Court of the United States

October Term, 1963

No. 647

NEAL CLARK,

Petitioner,

vs.

WASHINGTON STATE BAR ASSOCIATION,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

HENRY WALDMAN,
Attorney for Petitioner,
5 Beekman Street,
New York 38, N. Y.

HENRY WALDMAN,
of Counsel.

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To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

1. The Supreme Court of the State of Washington, the court of last resort of said state, made and entered its order, which disbarred permanently the petitioner above named, Neal Clark, as a member of the Bar of the State of Washington.

2. Three of the eight justices, who participated in the proceeding, dissented, in the following opinion:

> "Rosellini, J. (dissenting)—The nature of count 3 and the evidence concerning it, which is based on hearsay and statements later repudiated, does tend to prejudice anyone reading the record, and this is amply illustrated by the tenor of the cross-examination of witnesses and of the respondent. The prejudice engendered permeates the whole record, and I cannot help but feel that it influenced the consideration given to the other counts by the trial committee and the Board of Governors, and also was considered by them in determining the penalty which they recommended should be imposed upon the respondent.

There is a truism in the trial of any cause that once a bell is rung, it cannot be unrung,' or as Omar Khayyam states it in The Rubaiyat:

> 'The Moving Finger writes; and, having writ,
> Moves on: nor all thy Piety nor Wit
> Shall lure it back to cancel half a Line,
> Nor all thy Tears wash out a word of it.'

This court should therefore be very careful to disregard this count and the evidence introduced under it, and endeavor to treat the respondent the same as others guilty of similar misconduct have been treated.

In this case Della Harper did receive a home and good medical care during her life as was agreed by the contract between her and the respondent. All the funds coming into the respondent's possession were accounted for. None of the funds were used by the respondent for any of the services that he rendered in the probate case or in the care of Mrs. Harper.

Since the respondent did claim property of his client to which he was not entitled, just as did the respondent attorney in *In re Simmons*, 59 Wn. (2d) 689, 369 P. (2d) 947, the penalty imposed therein should be likewise imposed in this instance.

I would suspend the respondent for a period of one year.

ROSELLINI, J.

We concur with Judge Rosellini

HUNTER, J.
HAMILTON, J."

The old saying that he who would be his own lawyer has a fool for a client is aptly illustrated in this proceeding.

Clark authored his petition and filed it before I had entered my appearance as his attorney and counsel.

The petition reflected the shock of one, who, from a position of standing in his community as a lawyer, is declared by the highest state court, no longer fit to practice law.

It was the cry of passionate despair and feeling of outrage. It omitted to state, except casually that three of the eight justices, dissented.

I realized that the petition was confusing, and would not impress the Court. It was my intention to straighten out the facts in a brief in reply to the respondent's answering brief. Respondent also realized that the petition would not appeal to the Court, and it waived its right to answer the petition, so that the only papers before the Court, was the petition, and its decision, denying certiorari. I must admit, was justified.

Respondent's strategy was cunning; some would perhaps term it clever and brilliant. It seriously affected the life of a man and the happiness of his family, for which reason, I cannot join in the cheers.

Mr. Clark was born in State of Washington, and has lived there all his life. He was admitted to the Bar on February 17, 1939, and had practiced law, actively and continuously (with the exception of time spent in military service).

No complaint of any unprofessional or unethical conduct had ever been made against him, so that the disbarment justifies his claim of the infliction of cruel and unusual punishment, contrary to his constitutional right against such treatment. Punishment is not limited to physical punishment.

He is married, and lives with his wife and two sons in Hadlock, a few miles from Seattle. He maintains his office in Hadlock.

The Bar of Washington is organized. It is ruled by a board of governors. When a complaint of unethical conduct is made against a lawyer and entertained by the Governing Board, it appoints a trial committee of three lawyers as the trial judges, one, a member of the board of governors.

The trial committee is presumed to be composed of impartial judges but the record fails to indicate fairness or impartiality.

On the contrary, they went after Clark with such extreme venom, that they created a miasma around them, which prevented them from distinguishing between right and wrong. To indulge in a colloquialism they were out "to get him" and they "got him".

The effect on the life of a lawyer who is disbarred is difficult to describe in mere words. He must begin anew. To a man of Clark's age—what occupation can he engage in without the handicap of distrust from almost everyone.

"He who takes from me the means whereby I live, he takes my life."

From the "Merchant of Venice" by Shakespeare, Act 4, Scene 1.

Under the Court Rules this application is labeled a "Petition". I somehow feel that it is, after all a motion in a proceeding. Should the Court grant it, we will come into Court, and show that Clark's constitutional rights had been violated, denial of due process—that in fact, he is the victim of judicial lynching.

We claim that his rights under the Fifth, Eighth, and Fourteenth Amendments of the Constitution of the United States have been violated.

Wherefore, we pray the Court that the Petition for Rehearing be granted and for such other and further relief as the Court may deem just and equitable.

Dated, New York, New York, February 5, 1964.

Respectfully submitted,

HENRY WALDMAN,
Attorney for Petitioner.
5 Beekman Street,
New York 38, N. Y.

HENRY WALDMAN,
of Counsel.

Certificate of Counsel

I, HENRY WALDMAN, counsel for Dean Clark, hereby certify that the foregoing petition is presented in good faith and not for delay. I further certify that the petition is restricted to the grounds above specified.

Dated, New York, New York, February 5, 1964.

HENRY WALDMAN,
Counsel for Petitioner, Neal Clark.